IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI BILAL NAZKI, THE ACTING CHIEF JUSTICE

and
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NO : 15099 of 2005

Between:

M/s. Navateja Marketing (P) Limited, 7-20, NDR Godowns,
Opp: Sanathanagar Goods Shed, Moosapet, Kukatpally, Hyderabad.
Rep. by its Managing Director Sri S.V. Satyanarayana.

..... PETITIONER

AND

1 The Union of India, Rep. by the Secretary,
Ministry of Finance, Central Secretariat, New Delhi.
2 Commissioner of Customs and Central Excise (Appeals-II) 7th Floor,

Central Revenue Buildings, L.B. Stadium Road,
Basheerbagh Hyderabad - 500 004.
3 The Assistant Commissioner of Central Excise & Customs, Division

K, Subedar Hasmi Complex, Bowenpally X Roads, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to pass an order or orders or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in rejecting the Stay Petition vide proceedings A.No. 2/2005(H-IV) S. Tax dated 16-6-2005 as arbitrary, illegal, unjust and contrary to the provisions of the Service Tax Act and Rules and consequently direct the 2nd respondent not to insist for pre-deposit of the amount as

demanded by 3rd respondent in Order-in-Original No.2 of 2005 vide proceedings No. C.No. V/51/27/30/2004-S. Tax(Adjn) dated 28-3-2005 pending consideration of the Appeal.

Counsel for the Petitioner:M/SC.KODANDA RAM

Counsel for the Respondents: MR.A.RAJASHEKAR REDDY (ASST SOLICITOR GEN)

The Court at the stage of admission made the following :

O R D E R (Per the Hon'ble Sri Bilal Nazki, ACJ)

Heard learned counsel for the parties.

The Assistant Commissioner of Central Excise & Customs confirmed the liability of the writ petitioner on account of service tax at Rs.7,03,953/-. The Assistant Commissioner also imposed a penalty of Rs.25,000/- on the petitioner. The petitioner filed an appeal before the Commissioner of Customs & Central Excise (Appeals-II). Along with the appeal, he had also filed a stay application. The Commissioner has considered the pleas raised before him and directed the petitioner to deposit a sum of Rs.3,50,000/-. Aggrieved by the same, the present writ petition is filed.

Before an appeal is filed, the person aggrieved of the order of the Assistant Commissioner has to deposit the whole tax amount and also the penalty. However, under proviso to Section 35-F of the Central Excise Act, 1944, the Commissioner has the power to dispense with the deposit of duty demanded or penalty levied. The Commissioner has exercised the jurisdiction after keeping in view the facts before him and has directed the petitioner to deposit a sum of Rs.3,50,000/-. We do not think that any interference is called for in this matter. The writ petition is accordingly dismissed. However, learned counsel for the petitioner submits that the time granted by the Commissioner for depositing the amount has expired. In these circumstances, we allow the petitioner another fifteen days to comply with the order of the

Commissioner. No order as to costs.

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(Bilal Nazki, ACJ)

15th July, 2005

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(G.Chandraiah,J)

vrn

To

1 The Union of India, Rep. by the Secretary,
Ministry of Finance, Central Secretariat, New Delhi.
2 Commissioner of Customs and Central Excise (Appeals-II) 7th Floor,

Central Revenue Buildings, L.B. Stadium Road,
Basheerbagh Hyderabad - 500 004.
3 The Assistant Commissioner of Central Excise & Customs, Division

K, Subedar Hasmi Complex, Bowenpally X Roads, Secunderabad.

4 Two C.Cs to the Assistant Solicitor General, High Court Buildings, A.P.,

Hyderabad (OUT)

5 Two C.D copies.